traverse and is hereby affirmed. Claim 8 has been objected to for the reason that it depends from itself. Claim 8 has been amended to deal with this objection.

Claims 1-5 and 7 have been rejected as being anticipated by Ognier. Claim 6 has been rejected as being obvious over the combination of Ognier and Schectman. Applicant traverses the anticipation and the obviousness rejections of Claims 1-7 for the following reasons.

THE § 102 REJECTION

As noted above, Claims 1-5 and 7 have been rejected as being anticipated by Ognier. The factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. See: Ex parte Levy, 17 USPQ2d 1461 (PTO Bd. of Pat. App. and Int. 1990). Furthermore, it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. See Lindermann Maschinenfabrik GmbH v. American Hoist and Derrick, 221 USPQ 481 (Fed. Cir. 1984). In determining anticipation, functional language, preambles, and language in "whereby", "thereby", and "adapted to" clauses cannot be disregarded. Pac-Tec, Inc. v. Amerace Corp., 14 USPQ2d 1871 (CAFC 1990).

Thus, the Ognier reference, in order to be anticipatory of the subject matter of Claims 1-5 and 7, must, by law, disclose each and every facet of the subject matter of each of Claims 1-5 and 7.

In the office action, the Examiner has provided his or her analysis of the disclosure of Ognier and has alleged that various components of the Ognier support device are exactly the same as the various components of the holding and positioning assembly of the rejected claims of the instant application and are operative to achieve the claimed purpose of the subject matter of Claims 1-5 and 7, which is to prevent body cavity wall rupture during orientation of a surgical accessory instrument in a body cavity.

The rejected Claims in this application:

We shall refer first to the subject matter of the rejected claims in this case. The claims require that the assembly include a swiveling and rotatable seat for gripping the surgical instruments in question. That seat is identified by the numeral 3 in the drawings in the instant application. The claims further require that the seat be linked to a mechanical arm by way of a multi directional movable joint mechanism. The arm is identified by the numeral 1 in the drawings in the instant application and the joint mechanism is identified by the numeral 2 in the drawings in the instant application. The claims further require that **the arm 1 be operative to prevent body cavity wall rupture during orientation of the surgical instrument**

in a body cavity and further be manually maneuverable to alter the position of the seat 3 in the assembly. Claims 2-6 require that the arm 1 **be sufficiently elastic so as to bend** before the tensile strength of the tissue of the surgical patient is reached during maneuvering of the assembly during surgery. Note that FIGS. 4 and 5 provide guidance re tensile strength of the patients' tissue. Claim 3 further requires that the elasticity of the arm 1 be controlled by the material from which it is made. Claim 4 further requires that the elasticity of the arm 1 be the result of swiveling joints formed therein. Claim 5 further requires that the arm 1 include torsion springs biasing the swiveling joints. Claim 7 further requires that rupture of the body cavity wall be prevented by restricting the degree of operative motion of the arm 1.

In summary, all of the claims in question all relate to an assembly which includes a mechanical arm that maneuvers a seat holding a surgical instrument and **that prevents body cavity wall rupture during such maneuvering**.

The Ognier Reference:

Ognier discloses a support device for a medical or surgical instrument. The overall device is shown in FIG. 1. The medical or surgical instrument is designated by the numeral 4. The instrument is mounted in a ball joint 103 which in turn is mounted on an arm 105. The arm 105 has two segments, a proximal segment 105a which is described as a **first rigid rectilinear part** (Col. 4, lines 62 and 63), and a distal segment 105b, details of which are shown in FIG. 5. The proximal part 105a has a terminal curved part which ends in a ball joint 108. The distal part 105b is connected to a cylindrical element 109. As noted previously, details of the distal element 105b are shown in FIG. 5, and are quite complex. The element 105b contains a first piston 41 which has a socket seat 41a that bears against the ball 103 and is operative to lock the ball 103 in place when so desired. A control rod 53 extends through the piston 41 and engages a lever 55 which acts on the ball joint 103. An auxiliary piston 47 is also disposed in the segment 105b. The auxiliary piston 47 controls movement of the control rod 53 and thus the lever 55. It is crystal clear from the structure shown in FIG. 5 that the distal segment 105b of the arm 105 is a rigid structure whereby the entire arm 105 is a rigid structure.

In the rejection, the Examiner characterizes the Ognier element 105b as being "a swiveling and rotatable seat", which is clearly erroneous. The Examiner goes on to allege that the ball joint 103 is the instrument which is gripped by the Ognier support device, which is likewise clearly erroneous. The Examiner further states that the mechanical arm in Ognier is the elements 105a and 106. This is also clearly erroneous.

Additionally, the Examiner states that the mechanical arm of Ognier "is sufficiently elastic so

as to bend before the tensile strength of the tissue of a surgical patient is reached during maneuvering of the assembly during surgery.". This allegation goes beyond being clearly erroneous. Where does the Examiner find support in the Ognier patent for this allegation? The mechanical arm 105 of Ognier **is clearly rigid**, as clearly specified in the patent. The Examiner then goes on to state that "the elasticity of the mechanical arm is controlled by the material that the mechanical arm is formed from" which is another clearly erroneous assertion. Where does the Examiner find support in the Ognier patent for this allegation? One last clearly erroneous allegation by the Examiner appears on page 4 of the office action where the Examiner alleges that the "spring 40c" shown in Figure 5 is a torsion spring. First of all, the numeral 40c does not refer to any spring at all, it refers to a rod which is a part of the secondary piston 40 (see Col.8, line 23 of the reference). The spring shown near element 40c is clearly a return spring for the secondary piston 40 and is not a "torsion spring".

Since the Ognier reference clearly does not disclose each and every element of the claimed assembly as defined by Claims 1-5 and 7 of the instant application, Ognier cannot be said to anticipate Claims 1-5 and 7. This rejection should therefore be reconsidered and withdrawn. Should the Examiner persist in this rejection, we suggest that he or she take a closer look at the reference and what it actually discloses.

This rejection is quite clearly erroneous.

THE § 103 REJECTION

Claim 6 has been rejected as being obvious over the combination of Ognier and Schectman. In support of this rejection, the Examiner states that: "Schectman teaches a surgical device having an elastomeric joint (12"). What the Schectman patent actually relates to is a mechanical prosthetic hand. The elements 12, 16 in Schectman are not elastomeric, they are rigid screws that when rotated by a motor 64 are able to reciprocate cable guide bushings 70 so as to control movement of phalange aluminum support bars 56, 58 and 60. This field of endeavor is non-analgous to the field of endeavor of Ognier, and it's disclosure has been misinterpreted by the Examiner almost as badly as the disclosure of Ognier was misinterpreted by the Examiner.

It is respectfully submitted that the various rejections and objections put forth in the office action have been addressed and rendered moot.

It is respectfully submitted that the claims in this application, as amended, are allowable. Early notice to that effect is courteously requested. A clean copy of the specification paragraphs as amended is enclosed herewith. A clean copy of the claims as amended is enclosed herewith.

Respectfully submitted,

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Date 10-31-05

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA. 22313-1450, on

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